

# Adopted by House 4-12-2013

SB444 HFIN AM 4-10

The Committee on Finance moves to amend the bill on page one, by striking out everything after the enacting clause, and inserting in lieu thereof the following:

"That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2A-1 and §18B-2A-3 of said code be amended and reenacted; that §18B-7-11 of said code be amended and reenacted; and that §18B-19-6 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

### **ARTICLE 1. STATE DEPOSITORIES.**

#### **§12-1-12d. Investments by Marshall University and West Virginia University.**

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University and West Virginia University each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on January 1, 2005. ~~Any such~~ The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys

1     invested is retained by the investing university.

2           (c) Moneys of a university that may be invested with its  
3     foundation pursuant to this section are those subject to the  
4     administrative control of the university that are collected under  
5     an act of the Legislature for specific purposes and do not include  
6     any funds made available to the university from the State General  
7     Revenue Fund or the funds established in sections eighteen or  
8     eighteen-a, article twenty-two, chapter twenty-nine of this code.  
9     Moneys permitted to be invested under this section may be  
10    aggregated in an investment fund for investment purposes.

11          (d) Of the moneys authorized for investment by this section,  
12    Marshall University and West Virginia University each,  
13    respectively, may have invested with its foundation at any time not  
14    more than the greater of:

15          (1) \$18 million for Marshall University and \$25 million for  
16    West Virginia University; or

17          (2) Sixty-five percent of its unrestricted net assets as  
18    presented in the statement of net assets for the fiscal year end  
19    audited financial reports.

20          (3) Notwithstanding subdivisions (1) and (2) of this  
21    subsection, with the approval of the Higher Education Policy  
22    Commission, Marshall University may increase the amount invested to  
23    ~~\$30~~ \$60 million and West Virginia University may increase the  
24    amount invested to ~~\$40~~ \$70 million.

25          (e) Investments by foundations that are authorized under this  
26    section shall be made in accordance with and subject to the

1 provisions of the Uniform Prudent Investor Act codified as article  
2 six-c, chapter forty-four of this code. As part of its fiduciary  
3 responsibilities, each governing board shall establish investment  
4 policies in accordance with the Uniform Prudent Investor Act for  
5 those moneys invested with its foundation. The governing board  
6 shall review, establish and modify, if necessary, the investment  
7 objectives as incorporated in its investment policies so as to  
8 provide for the financial security of the moneys invested with its  
9 foundation. The governing boards shall give consideration to the  
10 following:

11 (1) Preservation of capital;

12 (2) Diversification;

13 (3) Risk tolerance;

14 (4) Rate of return;

15 (5) Stability;

16 (6) Turnover;

17 (7) Liquidity; and

18 (8) Reasonable cost of fees.

19 (f) A governing board shall report annually by December 31 to  
20 the Governor and to the Joint Committee on Government and Finance  
21 on the performance of investments managed by its foundation  
22 pursuant to this section.

23 (g) The amendments to this section in the second extraordinary  
24 session of the Legislature in 2010 ~~shall~~ apply retroactively so  
25 that the authority granted by this section shall be construed as if  
26 that authority did not expire on July 1, 2010.

1     **ARTICLE 2A.   INSTITUTIONAL BOARDS OF GOVERNORS.**

2     **§18B-2A-1.   Findings;   composition   of   boards;   terms   and**  
3         **qualifications   of   members;   vacancies;   eligibility   for**  
4         **reappointment.**

5         (a) *Findings. -*

6             The Legislature finds that the State of West Virginia is  
7     served best when the membership of each governing board includes  
8     the following:

9             (1) The academic expertise and institutional experience of  
10    faculty members and a student of the institution governed by the  
11    board;

12            (2) The technical or professional expertise and institutional  
13    experience of a classified employee of the institution governed by  
14    the board;

15            (3) An awareness and understanding of the issues facing the  
16    institution governed by the board; and

17            (4) The diverse perspectives that arise from a membership that  
18    is balanced in terms of gender and varied in terms of race and  
19    ethnic heritage.

20         (b) *Boards of governors established. -*

21             A board of governors is continued at each of the following  
22    institutions: Bluefield State College, Blue Ridge Community and  
23    Technical College, Bridgemont Community and Technical College,  
24    Concord University, Eastern West Virginia Community and Technical  
25    College, Fairmont State University, Glenville State College,

1 Kanawha Valley Community and Technical College, Mountwest Community  
2 and Technical College, Marshall University, New River Community and  
3 Technical College, Pierpont Community and Technical College,  
4 Shepherd University, Southern West Virginia Community and Technical  
5 College, West Liberty University, West Virginia Northern Community  
6 and Technical College, the West Virginia School of Osteopathic  
7 Medicine, West Virginia State University, West Virginia University  
8 and West Virginia University at Parkersburg.

9 (c) *Board membership.* -

10 (1) An appointment to fill a vacancy on the board or  
11 reappointment of a member who is eligible to serve an additional  
12 term is made in accordance with the provisions of this section.

13 (2) The Board of Governors for Marshall University consists of  
14 sixteen persons. The Board of Governors for West Virginia  
15 University consists of seventeen persons. The boards of governors  
16 of the other state institutions of higher education consist of  
17 twelve persons.

18 (3) Each board of governors includes the following members:

19 (A) A full-time member of the faculty with the rank of  
20 instructor or above duly elected by the faculty of the respective  
21 institution;

22 (B) A member of the student body in good academic standing,  
23 enrolled for college credit work and duly elected by the student  
24 body of the respective institution; and

25 (C) A member from the institutional classified employees duly  
26 elected by the classified employees of the respective institution;

1           (4) For the Board of Governors at Marshall University,  
2 thirteen lay members appointed by the Governor, by and with the  
3 advice and consent of the Senate, pursuant to this section;

4           (5) For the Board of Governors at West Virginia University,  
5 twelve lay members appointed by the Governor, by and with the  
6 advice and consent of the Senate, pursuant to this section, and  
7 additionally:

8           (A) The Chairperson of the Board of Visitors of West Virginia  
9 University Institute of Technology;

10          (B) A full-time faculty member representing the extension  
11 service at the institution or a full-time faculty member  
12 representing the health sciences, selected by the faculty senate.

13          (6) For each board of governors of the other state  
14 institutions of higher education, nine lay members appointed by the  
15 Governor, by and with the advice and consent of the Senate,  
16 pursuant to this section.

17          (A) Of the nine members appointed by the Governor, no more  
18 than five may be of the same political party. Of the thirteen  
19 members appointed by the Governor to the governing board of  
20 Marshall University, no more than eight may be of the same  
21 political party. Of the twelve members appointed by the Governor  
22 to the governing board of West Virginia University, no more than  
23 seven may be of the same political party.

24          (B) Of the nine members appointed by the Governor, at least  
25 five shall be residents of the state. Of the thirteen members  
26 appointed by the Governor to the governing board of Marshall

1 University, at least eight shall be residents of the state. Of the  
2 twelve members appointed by the Governor to the governing board of  
3 West Virginia University, at least seven shall be residents of the  
4 state.

5 (7) In making lay appointments, the Governor shall consider  
6 the institutional mission and membership characteristics including  
7 the following:

8 (A) The need for individual skills, knowledge and experience  
9 relevant to governing the institution;

10 (B) The need for awareness and understanding of institutional  
11 problems and priorities, including those related to research,  
12 teaching and outreach;

13 (C) The value of gender, racial and ethnic diversity; and

14 (D) The value of achieving balance in gender and diversity in  
15 the racial and ethnic characteristics of the lay membership of each  
16 board.

17 (d) *Board member terms.* -

18 (1) The student member serves for a term of one year. Each  
19 term begins on July 1.

20 (2) The faculty member serves for a term of two years. Each  
21 term begins on July 1. Faculty members are eligible to succeed  
22 themselves for three additional terms, not to exceed a total of  
23 eight consecutive years.

24 (3) The member representing classified employees serves for a  
25 term of two years. Each term begins on July 1. Members  
26 representing classified employees are eligible to succeed

1 themselves for three additional terms, not to exceed a total of  
2 eight consecutive years.

3 (4) The appointed lay citizen members serve terms of ~~up to~~  
4 four years each and are eligible to succeed themselves for no more  
5 than one additional term, except that citizen members who are  
6 appointed to fill unexpired terms are eligible to succeed  
7 themselves for two full terms after completing an unexpired term.

8 (5) A vacancy in an unexpired term of a member shall be filled  
9 for the unexpired term within thirty days of the occurrence of the  
10 vacancy in the same manner as the original appointment or election.  
11 Except in the case of a vacancy, all elections are held and all  
12 appointments are made no later than June 30 preceding the  
13 commencement of the term. Each board of governors shall elect one  
14 of its appointed lay members to be chairperson in June of each  
15 year. A member may not serve as chairperson for more than four  
16 consecutive years.

17 (6) The appointed members of the boards of governors serve  
18 staggered terms of up to four years except that four of the initial  
19 appointments to the governing boards of community and technical  
20 colleges that became independent July 1, 2008, are for terms of two  
21 years and five of the initial appointments are for terms of four  
22 years.

23 (e) *Board member eligibility, expenses.* -

24 (1) A person is ineligible for appointment to membership on a  
25 board of governors of a state institution of higher education under  
26 the following conditions:



1           (A) For a baccalaureate institution or university, a person is  
2 ineligible for appointment who is an officer, employee or member of  
3 any other board of governors; an employee of any institution of  
4 higher education; an officer or member of any political party  
5 executive committee; the holder of any other public office or  
6 public employment under the government of this state or any of its  
7 political subdivisions; an employee of any affiliated research  
8 corporation created pursuant to article twelve of this chapter; an  
9 employee of any affiliated foundation organized and operated in  
10 support of one or more state institutions of higher education; or  
11 a member of the council or commission. This subsection does not  
12 prevent the representative from the faculty, classified employees,  
13 students or the superintendent of a county board of education from  
14 being members of the governing boards.

15           (B) For a community and technical college, a person is  
16 ineligible for appointment who is an officer, employee or member of  
17 any other board of governors; a member of a board of visitors of  
18 any public institution of higher education; an employee of any  
19 institution of higher education; an officer or member of any  
20 political party executive committee; the holder of any other public  
21 office, other than an elected county office, or public employment,  
22 other than employment by the county board of education, under the  
23 government of this state or any of its political subdivisions; an  
24 employee of any affiliated research corporation created pursuant to  
25 article twelve of this chapter; an employee of any affiliated  
26 foundation organized and operated in support of one or more state

1 institutions of higher education; or a member of the council or  
2 commission. This subsection does not prevent the representative  
3 from the faculty, classified employees or students from being  
4 members of the governing boards.

5 (2) Before exercising any authority or performing any duties  
6 as a member of a governing board, each member shall qualify as such  
7 by taking and subscribing to the oath of office prescribed by  
8 section five, article IV of the Constitution of West Virginia and  
9 the certificate thereof shall be filed with the Secretary of State.

10 (3) A member of a governing board appointed by the Governor  
11 may not be removed from office by the Governor except for official  
12 misconduct, incompetence, neglect of duty or gross immorality and  
13 then only in the manner prescribed by law for the removal of the  
14 state elective officers by the Governor.

15 (4) The members of the board of governors serve without  
16 compensation, but are reimbursed for all reasonable and necessary  
17 expenses actually incurred in the performance of official duties  
18 under this article upon presentation of an itemized sworn statement  
19 of expenses.

20 (5) The president of the institution shall make available  
21 resources of the institution for conducting the business of its  
22 board of governors. All expenses incurred by the board of  
23 governors and the institution under this section are paid from  
24 funds allocated to the institution for that purpose.

25 **§18B-2A-3. Supervision of governing boards; promulgation of rules;**  
26 **data collection and dissemination.**

1 (a) The governing boards are subject to the supervision of the  
2 commission or the council, as appropriate, except in those  
3 instances where specific statutory exceptions are granted by law to  
4 the governing boards of Marshall University and West Virginia  
5 University.

6 (b) The governing boards of all state institutions of higher  
7 education are subject to the provisions of law that relate to the  
8 administration of personnel matters including, specifically,  
9 articles seven, eight, nine and nine-a of this chapter and to rules  
10 promulgated and adopted in accordance with these provisions.

11 (c) The Chancellor for Higher Education and the Chancellor for  
12 Community and Technical College Education, under the supervision of  
13 their respective boards, are responsible for the coordination of  
14 policies, purposes and rules of the governing boards and shall  
15 provide for and facilitate sufficient interaction among the  
16 governing boards and between the governing boards and the State  
17 Board of Education to meet the goals and objectives provided in the  
18 compacts and in section one-a, article one and article one-d of  
19 this chapter.

20 (d) The governing boards and the State Board of Education  
21 shall provide all information requested by the commission and the  
22 council, whether the request is made separately or jointly, in an  
23 appropriate format and in a timely manner.

24 (1) Each governing board shall cooperate with the West  
25 Virginia Network for Educational Telecomputing (WVNET) in designing  
26 appropriate interfaces with the databases of institutions under its

1 jurisdiction and shall grant WVNET direct access to these  
2 databases.

3 (2) WVNET, on behalf of the commission or council or both,  
4 shall generate reports from the data accessed for the purposes set  
5 forth in section five, article one-a and sections eight and ten,  
6 article one-d of this chapter.

7 (3) All data accessed or received from an institution shall be  
8 treated in a manner consistent with the privacy protections  
9 outlined in section ten, article one-d of this chapter.

10 **ARTICLE 7. PERSONNEL GENERALLY.**

11 **§18B-7-11. Employees designated as nonclassified; limits;**  
12 **exceptions; reports required.**

13 (a) Notwithstanding any provision of this code to the  
14 contrary, by July 1, 2015, the percentage of personnel placed in  
15 the category of nonclassified at a higher education organization  
16 may not exceed twenty percent of the total number of classified and  
17 nonclassified employees of that organization as those terms are  
18 defined in section two, article nine-a of this chapter and who are  
19 eligible for membership in a state retirement system of the State  
20 of West Virginia or other retirement plan authorized by the state.

21 A higher education organization which has more than twenty  
22 percent of its employees placed in the nonclassified category as  
23 defined by this subsection on July 1, 2011, shall reduce the number  
24 of nonclassified employees to no more than twenty-five percent by  
25 July 1, 2013, and to no more than twenty percent by July 1, 2015,

1 except as set forth in subsections (b) and (c) of this section.

2 (b) For the purpose of determining the ratio of nonclassified  
3 employees pursuant to this section, the following conditions apply:

4 ~~(1) Employees of the commission and the chancellor for higher~~  
5 ~~education and employees of the council and the chancellor for~~  
6 ~~community and technical college education are considered as one~~  
7 ~~organization;~~

8 ~~(2)~~ Organizations ~~may~~ shall count ~~as~~ faculty or classified  
9 employees, respectively, ~~administrators~~ who retain the right to  
10 return to faculty or classified employee positions, ~~and~~ in the  
11 employee category they are serving in at the time of reporting as  
12 required by subsections (a) and (b), section eight of this article.  
13 Such employees will be counted in their original category at such  
14 time as they exercise their return rights.

15 ~~(3)~~ (2) Athletic coaches are excluded from calculation of the  
16 ratio. The commission and the council shall include consideration  
17 of this employee category in each review required by section nine  
18 of this article and shall monitor organizations' use of this  
19 category and include this information in the reports required by  
20 subsections (a) and (b), section eight of this article.

21 (c) An organization may place up to twenty-five percent of the  
22 total number of classified and nonclassified employees of that  
23 organization as defined by this section in the nonclassified  
24 category under the following conditions:

25 (1) The governing board of an institution votes to approve any  
26 percentage or fraction of a percentage number above twenty percent

1 and seeks and receives the approval of the commission or council,  
2 as appropriate, before increasing the total above twenty percent.

3 ~~(2) In the case of personnel employed by the commission and~~  
4 ~~the council, the chancellors jointly shall agree to increase the~~  
5 ~~percentage number or fraction of a number of nonclassified~~  
6 ~~employees beyond twenty percent and shall recommend this action to~~  
7 ~~their respective boards for approval.~~

8 (A) The commission and council each shall approve or  
9 disapprove the increase and shall include the vote, as well as  
10 details of the position and justification for placing the position  
11 in the nonclassified category, in its minute record.

12 (B) The number of nonclassified personnel may not be increased  
13 above twenty percent unless the increase is approved by both the  
14 commission and the council.

15 ~~(3)~~ (2) *Powers and duties of commission and council regarding*  
16 *nonclassified staff ratios. -*

17 (A) It is the duty of the commission and council jointly to  
18 establish criteria for the purpose of making decisions on approving  
19 or disapproving requests by organizations to exceed the twenty  
20 percent limit for personnel placed in the nonclassified category;

21 (B) The commission and council shall provide technical  
22 assistance to organizations under their respective jurisdictions in  
23 collecting and interpreting data to ensure that they fulfill the  
24 requirements established by this section. Consideration of these  
25 issues shall be made part of each review required by section nine  
26 of this article and information from the review included in the

1 reports required by subsections (a) and (b), section eight of this  
2 article;

3 (C) The chancellors shall monitor the progress of the  
4 organizations in meeting the deadlines established in this section  
5 and shall report periodically to the council and commission. The  
6 commission and council shall make a preliminary compliance report  
7 to the Legislative Oversight Commission on Education Accountability  
8 by September 1, 2013, and a final report on organization compliance  
9 to that body by September 1, 2015.

10 (D) Subject to a joint recommendation by the commission and  
11 the council and subsequent affirmative action by the Legislature to  
12 extend the authority beyond the specified date of termination, the  
13 authority of an organization to place more than twenty percent of  
14 its personnel in the nonclassified category pursuant to this  
15 section expires on July 1, 2016.

16 (d) The current annual salary of a nonclassified employee may  
17 not be reduced if his or her position is redefined as a classified  
18 position solely to meet the requirements of this section. If such  
19 a nonclassified employee is reclassified, his or her salary does  
20 not constitute evidence of inequitable compensation in comparison  
21 to other employees in the same paygrade.

22 (e) For the purposes of this section only the commission and  
23 council are not considered higher education organizations.

24 **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

25 **18B-19-6. Capital project financing.**

26 (a) The commission and governing boards, jointly or singly,

1 may issue revenue bonds for capital project financing in accordance  
2 with section eight, article ten of this chapter.

3 (b) A governing board may seek funding for and initiate  
4 construction or renovation work only for projects contained in an  
5 approved campus development plan.

6 (c) A governing board may fund capital improvements on a cash  
7 basis, through bonding or through another financing method that is  
8 approved by the commission and by the council, if appropriate.

9 (1) ~~If the~~ Any time the cumulative total cost of an  
10 improvement project for any institution, except Marshall University  
11 or West Virginia University, exceeds ~~\$1~~ \$2 million, the governing  
12 board first shall obtain the approval of the commission or council,  
13 as appropriate. ~~If the~~ Any time the cumulative total cost of an  
14 improvement project for Marshall University or West Virginia  
15 University exceeds ~~\$15~~ \$50 million, the governing board first shall  
16 obtain the approval of the commission.

17 (2) Prior to approving bonding or any alternative financing  
18 method, the commission, and council if appropriate, shall evaluate  
19 the following issues:

20 (A) The institution's debt capacity and ability to meet the  
21 debt service payments for the full term of the financing;

22 (B) The institution's capacity to generate revenue sufficient  
23 to complete the project;

24 (C) The institution's ability to fund ongoing operations and  
25 maintenance;

26 (D) The impact of the financing arrangement on students; and



1           (E) Any other factor considered appropriate.

2           (d) A governing board shall notify the Joint Committee on  
3     Government and Finance at least thirty days before beginning  
4     construction or renovation work on any capital project in excess of  
5     \$1 million.

6           (e) The commission may pledge all or part of the fees of any  
7     or all state institutions of higher education as part of a system  
8     bond issue.

9           (f) Any fee or revenue source pledged prior to the effective  
10    date of this section for payment of any outstanding debt remains in  
11    effect until the debt is fully repaid or refunded.".